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UNITED STATES BANKRUPTCY COURT

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SOUTHERN DISTRICT OF NEW YORK

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Case No. 12-12020-mg

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In the Matter of:

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RESIDENTIAL CAPITAL, LLC, et al.,

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Debtors.

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United States Bankruptcy Court

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One Bowling Green

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New York, New York

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July 3, 2013

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10:02 AM

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B E F O R E:

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HON. MARTIN GLENN

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U.S. BANKRUPTCY JUDGE

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2 **Status conference**

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1 P R O C E E D I N G S

2 THE COURT: All right. Please be seated.

3 We are in Residential Capital number 12-12020 and also
4 in connection with two adversary proceedings, 13-01343 and 13-
5 01277.

6 Mr. Lee.

7 MR. LEE: Good morning, Your Honor. Gary Lee from
8 Morrison and Foerster for the debtors.

9 THE COURT: Let me just say before you proceed, this
10 is on the record. Go ahead.

11 MR. LEE: Thank you, Your Honor. And thank you for
12 seeing us on short notice.

13 Your Honor, I just want to be clear from the outset
14 that this is not about discovery. There is a telephonic
15 conference scheduled for next Tuesday.

16 THE COURT: Well, I'll tell you now, that conference
17 is going to be in court rather than on the telephone. Mr.
18 Walper, who is in California, can participate by telephone, but
19 we're going to -- I want everybody here at 5 o'clock.

20 MR. LEE: Thank you, Your Honor.

21 What this is about, Your Honor, is getting Your
22 Honor's guidance on how we should respond to the noteholders'
23 attempts, second round, third round, to raise plan issues in
24 the context of the adversary proceeding.

25 Your Honor, there are three things I want to address.

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1 First, we think Your Honor was abundantly clear at the last
2 status conference that the adversary proceeding related to
3 nonplan issues. We believe, and I'll go through this in some
4 more detail, that the noteholders ignores that direction.
5 Second, just to cut through some of the letter writing or at
6 least the three letters, we're not here to prejudice any
7 confirmation objections they can conjure up. We'll be
8 absolutely clear about that. Third, we do believe that the
9 notion of interdebtor conflicts was revolved when Your Honor
10 approved the plan support agreement. And if I may, Your Honor,
11 I'd like to go through those three points in a little bit more
12 detail.

13 Later today, we will be filing a plan and disclosure
14 statement. It's a plan that has the support of creditors with
15 claims throughout the debtor's capital structure, and we expect
16 overwhelming support for that plan from impaired creditors at
17 the principal debtors. The plan embodies a number of
18 compromises, the product of Judge Peck's mediation, and one of
19 those compromises relates to intercompany claims. For the
20 noteholders, Your Honor, this case -- because we're paying them
21 post -- sorry -- we're paying them par plus accrued, this case
22 now comes down to one issue, post-petition interest and post-
23 petition interest alone.

24 The reason we requested this status conference, Your
25 Honor, is to seek some direction on how and to what extent the

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7

1 noteholders are going to be able to disrupt the schedule set by
2 Your Honor in relation to the consolidated adversary
3 proceeding. And Your Honor suggested that we would -- should
4 come back to the court, that we shouldn't let these sorts of
5 issues fester, so that's why we're here.

6 We provided Your Honor with a copy of the junior
7 secured noteholders' letter which comes out of a unsuccessful
8 playbook that we've seen in other cases pending and resolved in
9 the southern district of New York. Refer Your Honor to Charter
10 and Adelphia.

11 Now, as I said, Your Honor was abundantly clear during
12 the chambers conference on scheduling that the allowable scope
13 of the adversary proceeding was nonplan matters. I don't know
14 if Your Honor has seen a copy of the junior secured
15 noteholders' counterclaims that were filed, I believe, this
16 week -- or last week. I think they speak for themselves as to
17 where the junior secured noteholders intend to go with the
18 adversary proceeding. Somebody on the noteholder side decided
19 to ignore Your Honor's direction because something like over a
20 dozen of the declarations sought by the counterclaims relate to
21 the global settlement that's embodied in the plan support
22 agreement and will be embodied in the plan.

23 And although I don't intend to address discovery
24 matters, and I didn't have enough time to actually go through
25 the 247 document requests we received, I just note for the

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1 record that ten alone go to the ability of the debtors to
2 resolve intercompany claims. So just to give you a flavor of
3 the counterclaims, Your Honor, ten of them seek a determination
4 of the exact distributable value of each of the intercompany
5 claims. That, Your Honor, is a plan issue because the
6 intercompany claims have been settled as part of the plan.

7 Second, Your Honor, several more seek to subordinate
8 the RMBS trustee claims, the monoline claims, and the
9 securities claims. Again, Your Honor, the exact claims that
10 are resolved as part of the plan. And there's something more
11 to this playbook as well, Your Honor. The junior secured
12 noteholders also objected to the FGIC settlement that resolves
13 the FGIC and the trustee's claims. Now, they're free to do so,
14 and we'll address that at the appropriate time, but I just,
15 again, note for the record that that 9019 settlement addresses
16 not the plan or the plan-related issues but rather settles
17 nearly ten billion dollars of claims, the claims totally 596
18 million dollar split between two debtors. And I can't fathom
19 why anybody would object to that.

20 Your Honor, we're not asking you for anything new
21 here. Your Honor was very clear to Mr. Uzzi what the adversary
22 proceeding will cover, and I don't think that message has come
23 through.

24 The other part of the playbook, which I think was
25 particularly disconcerting to the debtors because it came the

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9

1 same day Your Honor approved the plan support agreement, is the
2 attack on the process run by Judge Peck, the attack on Mr.
3 Kruger and on us as counsel. And we made it very clear when we
4 sought Judge Peck's appointment as mediator that one of the
5 things he would mediate was going to be intercompany claims.
6 The junior secured noteholders refused to participate in that
7 mediation based on the rules Judge Peck set. Those are not
8 rules that the debtor set. We also made it clear in the
9 application to appoint Mr. Kruger as the CRO that he would
10 assist in resolving interdebtor and intercreditor disputes and
11 that he was vested with authority to make decisions on behalf
12 of each debtor.

13 So, Your Honor, we think it's totally unfair fourteen
14 months into this case after Your Honor approved the plan
15 support agreement as being in the best interest of each of the
16 debtors, after we agreed to pay the junior secured noteholders
17 par plus accrued, after we agreed to pay post-petition interest
18 if they prevail in the adversary for them to take this tack.
19 I've just come back from England, Your Honor, and the
20 expression is, "it just isn't cricket."

21 They can attack the transactions embodied in the plan.
22 We've given them that right. It's been reserved. They can
23 attack good faith at confirmation if they want to. We are not
24 going to, nor do we believe we can prejudice their confirmation
25 objections. What they can't do, Your Honor, is create

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10

1 interdebtor conflicts or disagreements where there are none and
2 make those part of the adversary proceeding. Again, Your
3 Honor, that's beyond what you told them. The adversary
4 proceeding relates to the junior secured note issues and not
5 the plan.

6 So what we're asking Your Honor for is for some
7 direction and perhaps repeat direction with respect to two
8 matters. First, that allegations regarding conflicts have no
9 part of the adversary proceeding. If the junior secured
10 noteholders insist on challenging the bona fides of plan
11 settlements under 9019, they can do so at confirmation, but the
12 notion of interdebtor conflicts went out the window when the
13 plan support agreement was approved.

14 Second, Your Honor, that issues that are at the core
15 of the global settlement, the priority of claims, the amount of
16 claims, the intercompany settlement, the AFI settlement
17 allocation are exactly those things, plan issues. Your Honor
18 said it once, but it doesn't appear to have taken. They're not
19 part of the adversary proceeding.

20 Your Honor, our view is that it will defeat the entire
21 purpose of the mediation if we have to litigate those issues
22 outside of a plan.

23 THE COURT: Thank you, Mr. Lee.

24 MR. LEE: Thank you.

25 THE COURT: Mr. Shore.

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11

1 MR. SHORE: Yes, Your Honor, Chris Shore from White &
2 Case on behalf of the Ad Hoc Group.

3 Let me state at the outset as set forth in the letter
4 that got sent to you either late last night or early this
5 morning, we object to the setting on this kind of notice and on
6 the circumstances under which it arose, and in particular now,
7 since what Mr. Lee said is the letter which pertains to
8 discovery issues really isn't doubt discovery issues at all but
9 rather is an open-ended request for this Court's guidance on
10 how to deal with issues. I'm not going to address the
11 extraneous issues in the letter or what were said today with
12 respect to the mediation or the discovery. We'll handle those
13 either in the mediation or in the discovery conference unless
14 Your Honor wants to hear from me on that.

15 Fundamentally, the issue in this case arises out of
16 the debtor's very demonstrable shift in positions with respect
17 to what they're doing with respect to interdebtor conflicts in
18 these cases. They started out saying that it's all going to be
19 proposed for a settlement. Then they came back and said, well,
20 it's not being proposed for a settlement, it's being -- we've
21 determined that they have no mathematical value. Then they
22 came back and said, actually, what we want to do -- and this
23 was the statement that was made on the report at the PSA
24 hearing and in their PSA reply -- what we intend to do is to
25 waive intercompany claims based upon a legal determination

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12

1 that's been made that those claims have no merit. We had a
2 call --

3 THE COURT: What they've said, I bought, was that they
4 propose a settlement which must be approved under 9019 and plan
5 confirmation standards that would value the intercompany claims
6 at zero, but it's a settlement, it's not a determination --
7 it's -- a settlement is a compromise.

8 MR. SHORE: We thought as much as well, Your Honor,
9 and that's where the problem lies. We can all have our views
10 as to whether a plan which throws up interdebtor conflicts in
11 the air and says you all creditors resolve it makes sense. I
12 happen to think that it just takes the fiduciary out of the
13 seat, but that's a process which works. That's not what the
14 debtors are proposing, Your Honor. That's what they had
15 proposed. And then we went to them and said first, there's a
16 problem with a settlement like this, you're settling everything
17 at zero, their -- please explain to us how, when you have one
18 intercompany claim is at 2.6 billion dollars running from one
19 debtor to another, that gets settled at zero, same with a 35
20 million dollar claim that runs from this debtor. They didn't
21 have an answer to that and --

22 THE COURT: Well, the time -- the time for the answers
23 to those questions will be when the Court considers the
24 settlements -- if the Court gets to that point of considering
25 the settlements embodied in the plan. It's not today. I

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13

1 understand your views --

2 MR. SHORE: Um-hum.

3 THE COURT: -- and I understand the views of the
4 debtor -- debtors. That's not today's issue.

5 MR. SHORE: I didn't -- I didn't make it today's
6 issue, Your Honor. What they're saying is that this issue is
7 not going to be litigated, and let me respond to that in two
8 respects.

9 First, the notion that this got resolved in the PSA is
10 contrary to everything in the record on that PSA. As we set
11 forth in our supplemental response, the first time they said,
12 we're seeking to waive intercompany claims because we believe
13 they have no value, we called them up immediately -- and this
14 is in the supplemental response -- and said, you don't really
15 mean that, do you, that you're making a determination that
16 these claims have no legal merit? They said, no, we're not,
17 we're just saying that the math doesn't work, that the math
18 doesn't provide value. That's why we filed the supplemental
19 response.

20 But in that, we said we preserve all rights with
21 respect to this, and there were statements made on the record,
22 we're concerned that what the debtors are doing here is losing
23 any sensitivity to the issue of how to handle interdebtor
24 conflicts. You want to propose it for a settlement, fine, but
25 you can't come in as an advocate and say, on behalf of one

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14

1 client, these intercompany claims are good, those enter company
2 claims are bad. You also can't say, in between the clients,
3 this is how we think the Ally settlement should be allocated.
4 You can't do what they want to do on another interdebtor
5 conflict, which is how to allocate expense and push all the
6 expense of these cases down OpCo's --

7 THE COURT: Are you suggesting, Mr. Lee, that the
8 debtor unilaterally decided those issues or that those were
9 issues that at this stage were resolved among the parties to
10 the PSA? It's not -- this is not a debtor-only issue. The two
11 term sheets that are attached to the PSA, which the Court has
12 approved the PSA at least as to those parties who've signed the
13 PSA, they've agreed to support a plan consistent with the term
14 set forth in the two term sheets.

15 So I've seen nothing to suggest that those were
16 unilateral decisions by the debtor or the CRO. Whether they
17 get approved by the Court is a different issue, but you make it
18 sound as if the debtor unilaterally decided how those issues
19 would be resolved.

20 MR. SHORE: I --

21 THE COURT: It doesn't appear to the Court to be that
22 way.

23 MR. SHORE: Okay. Well, then maybe we can get a --
24 we'll certainly get --

25 THE COURT: Well, just address me. Don't --

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1 MR. SHORE: Sure.

2 THE COURT: Don't address questions to --

3 MR. SHORE: No, I'm saying I think we're going to get
4 an answer, a definitive answer, from the debtors on how they're
5 dealing with these intercompany claims in the context of the
6 plan and disclosure statement that are going to be filed, which
7 is why I didn't want to have this proceeding today. We will
8 get the definitive view.

9 My point is, it sure sounds to us like what the
10 debtors want to do, to avoid an issue that we raised with
11 respect to adequate protection, is say the reason the
12 settlement works and the reason the Court can approve the
13 settlement is because the debtors have already determined,
14 based upon Mr. Kruger's negotiation with himself, and advice by
15 Morrison & Foerster, that all the intercompany claims are
16 without legal merit. If that's the position they're taking,
17 that, I think, is going to be a surprise to Your Honor and it's
18 going to meet with questions from me, which is, how do you plan
19 to do that, which was the purpose of the letter. We still have
20 not gotten a response.

21 If Mr. Lee stands up and says there's nothing about
22 our plan which will seek a determination from this Court that
23 our waiver of intercompany claims in connection with the
24 settlement was supportable by the law and by legal
25 determination of the respective rights and obligations of our

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16

1 many debtors, that's one thing. That's not what they're
2 saying.

3 THE COURT: Well, I guess we can all -- you can spend
4 your weekend reading the plan and disclosure statement.

5 MR. SHORE: Now, with respect to the counterclaims and
6 the injection of issues in this case, as Your Honor pointed out
7 on the PSA, there is no plan on file. The debtors requested,
8 and Your Honor ordered, that we file our answer and
9 counterclaims with respect to all issues relating to the
10 allowance of post-petition interest. There is no --

11 THE COURT: Let me see if I can put this aspect of it
12 to rest, okay? I don't view anything that this Court has done,
13 or the order that was entered approving the PSA, or what
14 occurred at any prior conference in the court, as limiting the
15 JSNs as to what would be an appropriate pleading, what would be
16 an appropriate counterclaim under applicable Federal Rules of
17 Civil Procedure. They can and should and did assert claims
18 that they believe are supported by the facts and the law.
19 Whether that's true or not, we'll see. Approval of the PSA, to
20 which the JSNs were not parties, cannot alter the JSN's rights.

21 With that said, however, not all issues necessarily
22 raised by the counterclaims need to be resolved at one time.
23 And what I've been clear about and what I want to be clear
24 about is that I intend -- I think I referred to it as the phase
25 one trial, the trial of the issues -- well, of issues, we'll

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1 say, not the issues -- of issues with respect to the JSNs, the
2 extent the issues are included within the 9019 that's going to
3 be embodied in the plan. It seems to me that those will be
4 heard, tried, to the extent they're contested, in the
5 confirmation hearing.

6 Specifically, this issue of valuing intercompany
7 claims at zero, it's an issue that affects many creditor
8 constituencies, not just the JSNs. And I don't intend to hear
9 or resolve the evidence or arguments with respect to that issue
10 at a trial of the adversary proceedings.

11 To the extent that the JSNs raise issues in their
12 counterclaims that the debtors believe -- and we'll see whether
13 the parties can agree on this or not -- that are what the
14 debtor describes as plan confirmation issues, they can be
15 bifurcated from the issues that'll be tried. I mean, this is
16 not -- I mean, the procedures are pretty clear about this. I
17 have great discretion about what issues -- if I bifurcate here
18 and resolve particular issues, I can do that, and I will do
19 that. To the extent that issues raised by the JSNs are covered
20 by the 9019, I'll go ahead and hear and decide it.

21 I mean, you know, the proponents of the plan --
22 proponents of the 9019 settlement, have a larger hurdle when
23 the objectors are not part -- claim that a settlement is
24 improperly affecting their rights. But certainly there is
25 authority for a court to go ahead and approve it, unless

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18

1 there's an agreement with the JSNs, and if they oppose plan
2 confirmation, and if they oppose the global settlement with
3 respect to intercompany claims, I'm going to have to hear the
4 evidence and decide it as part of plan confirmation, and I
5 will.

6 And to the extent they raise those issues, if properly
7 raised -- I don't believe, Mr. Lee, that anything I've said
8 from the bench or any order I've entered, including the order
9 approving the PSA, has affected, substantively, the rights of
10 the JSNs. Okay. So did they have to assert them? Is this
11 compulsory counterclaims that they had to assert? I'm not
12 going to get into that. I don't know. I'll tell you right
13 now, I haven't read the most recent round of pleadings, okay?
14 It may well be their position is that these are compulsory
15 counterclaims and they had to assert them. And fine, so
16 they've asserted them. Okay.

17 So anything else you want to add?

18 MR. SHORE: Yeah, let me just respond to that last
19 piece, to make our position clear on this. We heard Your Honor
20 loud and clear with respect to affecting rights of the others.
21 We have offered multiple mechanisms, procedural mechanisms for
22 handling our issues, independent of any issues that relate to
23 the global settlement or other parties. That's just been
24 soundly rejected. We're still trying to work through that.

25 Second, our counterclaims, actually, what we're trying

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19

1 to do is, independent of the global settlement, there are
2 issues that have to be resolved. For example, if they want to
3 settle the inter -- intercompany claims are our collateral;
4 there's no dispute about that. If they want to settle those
5 claims at zero, they can do that --

6 THE COURT: Well, when you say that's part of your
7 collateral, what I had understood your position to be is, for
8 example, you have a pledge of the equity of various ResCap
9 affiliates, and your position is if they have -- if they are
10 creditors on a substantial intercompany claim, that would
11 make -- which it paid in full or in substantial part, would
12 make that entity solvent, such that the equity had value. You
13 claim you have the equity as part of your collateral package.
14 Do I understand that correctly?

15 MR. SHORE: That's one issue. The other issue is
16 intercompany claims. So for example, RFC has a two billion
17 dollar claim scheduled -- plus billion dollar claim into
18 ResCap, LLC, which is pursuant to a notes agreement. If value
19 flows, that is, if the 2.6 billion dollar claim is --

20 THE COURT: May I ask you this? Do you have a pledge
21 specifically of that intercompany claim or --

22 MR. SHORE: Yes, on that one, we have various pledges
23 that -- or sorry, various grants --

24 THE COURT: You have a pledge --

25 MR. SHORE: -- of security interests.

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 THE COURT: -- of a note?

2 MR. SHORE: We do not. We have a lien on the general
3 intangible of RFC. If value flows on that -- and this is a
4 stipulated lien at this point; the debtors have agreed to it
5 and the committee is estopped, at this point, because they
6 didn't challenge it. If value flows on that, so let's say the
7 two billion dollar claim gets paid at ten cents on the dollar
8 at ResCap, LLC, 200 million dollars flows, subject to our lien.
9 What they're doing here is they're saying there are no
10 intercompany claims.

11 THE COURT: Oh, I understand what they're doing --

12 MR. SHORE: Right.

13 THE COURT: -- Mr. --

14 MR. SHORE: So --

15 THE COURT: -- Mr. Shore.

16 MR. SHORE: So those are the counterclaims. So let's
17 say they want to settle that claim at zero. If Your Honor
18 determines, though, that that collateral was worth 200 million
19 dollars, we have a diminution in value, because the debtors
20 have disposed of the collateral of 200 million dollars.

21 THE COURT: Well, if I determine that there are
22 disputed issues as to whether debt should be recharacterized as
23 equity, for example, and they've settled that issue, I don't --
24 what is it that says it can't be settled without your consent
25 or agreement?

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 MR. SHORE: There's nothing that says it can't be
2 settled --

3 THE COURT: Right.

4 MR. SHORE: -- without --

5 THE COURT: And so what the issue for the 9019 is:
6 Does the settlement pass muster? It may or it may not.

7 MR. SHORE: Right. There are two issues --

8 THE COURT: But that's not an issue for this phase one
9 trial.

10 MR. SHORE: There are two issues there. First of all,
11 the RFC one we understand. There are other debtors there who
12 are not represented, even virtually, by any creditors who are
13 part of that negotiation. So the notion that the OpCos below
14 waive their intercompany claims into the parent, as approved by
15 everybody who's sitting at those top levels, I think is one of
16 the problems with the 9019. But more importantly --

17 THE COURT: You'll attack it; if that's what you
18 believe --

19 MR. SHORE: Right.

20 THE COURT: -- that's what you'll -- you'll make that
21 argument.

22 MR. SHORE: Even if it's settled, though, even if it's
23 settled at zero, if Your Honor says that the claims, the
24 particular claims had value but were settled at zero --

25 THE COURT: Okay.

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 MR. SHORE: -- as part of the --

2 THE COURT: Mr. Shore?

3 MR. SHORE: -- global compromise --

4 THE COURT: How can I make this any clearer? I said
5 it at the prior hearings. This one's on the record; you can
6 get a transcript. Okay? If you have objections to plan
7 confirmation, if you have an objection to the settlements that
8 will be embodied in the plan, you will file your objection, and
9 I will hear them then. Because the issue of the interdebtor
10 claims affects many constituencies, okay, they all have a right
11 to be heard, either in support of the settlement or in
12 opposition to the settlement. Okay?

13 MR. SHORE: And as a matter --

14 THE COURT: And I plan to do that as part of the plan
15 confirmation, okay? I've said it before; it may have been on
16 the transcript before. Some of these hearings on scheduling
17 have not been on the record. I wanted this one on the record,
18 okay? You can order a transcript. Okay. Anything else you
19 want to say?

20 MR. SHORE: Only this. We have a procedure set in
21 place. We have counterclaims that are filed in the adversary.
22 They have a time to respond to those. I assume that what
23 they're going to do, after we see the plan and disclosure
24 statement, is move to have the Court abstain from hearing these
25 twelve --

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1 THE COURT: I don't think it's an abstention. It's
2 not an abstention, I'm telling you. It may be that I will
3 bifurcate the issues.

4 MR. SHORE: That may be another proposal as to how
5 they plan on dealing with it, which is bifurcating the issues.
6 That's fine. But we need to have some procedure that sets in
7 place as to exactly --

8 THE COURT: Okay. I'm going to --

9 MR. SHORE: -- what's happening.

10 THE COURT: That is what I'm going to give some
11 guidance about. Anything else you want to add, Mr. Shore?

12 MR. SHORE: Nothing, Your Honor.

13 THE COURT: All right. Anybody else want to be heard?
14 Mr. Golden?

15 MR. GOLDEN: Your Honor, UMB, as the indenture trustee
16 for all the junior secured noteholders, has heard the Court
17 loud and clear. We understand, always understood, that it was
18 the intention of this Court to handle the settlement of the
19 intercompany claims as part of the global settlement in
20 connection with the plan process. We don't have a problem with
21 that, per se. But the debtor, in its adversary proceeding, in
22 its amended adversary proceeding, specifically Count 5 of that
23 adversary proceeding, puts into direct issue those intercompany
24 claims. Count 5, paraphrasing, says they want a declaration
25 that the junior secured noteholders are undersecured.

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 Everybody here understands undersecured; the value of the
2 collateral is less than the amount of the claim.

3 Now, leaving aside the shaky legal proposition that
4 they're asserting, and we'll get to that in due course, that
5 claim, that count requires the junior secured noteholders and
6 UMB, as the fiduciary, to defend against that. It is nobody --
7 it's not going to come as a surprise to anybody that a large
8 part of the collateral that the junior secured noteholders
9 assert they had are the intercompany claims. And --

10 THE COURT: You don't have a pledge of the
11 intercompany claims, do you?

12 MR. GOLDEN: Your --

13 THE COURT: Show me a piece of paper that says you
14 have a -- that your collateral specifically includes the
15 intercompany claims. I've never understood that to be the
16 case. You may -- Mr. Shore raises an issue about a pledge of
17 intangibles. It may cover it; it may not cover. Those as to
18 which you have a pledge of the equity of subsidiaries or
19 affiliates, if they're solvent, if the intercompany -- if
20 payment on the intercompany claims would mean they're solvent,
21 then there's value for you if you have a pledge of the equity.

22 But do you have a piece of paper that is a pledge of a
23 note or another piece of paper that reflects an intercompany
24 claim?

25 MR. GOLDEN: As Mr. Shore explained, Your Honor, we

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25

1 don't. But it is --

2 THE COURT: Okay.

3 MR. GOLDEN: But it is our position --

4 THE COURT: I understand your position --

5 MR. GOLDEN: Okay.

6 THE COURT: -- Mr. Golden.

7 MR. GOLDEN: So having that as our position, we need
8 to defend against Count V which says we're undersecured.

9 THE COURT: And the -- well, my understanding is they
10 claim you're undersecured, for a whole variety of reasons. And
11 it may be that, in trying this first phase and this -- the
12 adversary, all issues aren't going to be resolved, because I
13 understand your point about if intercompany claims are not
14 valued at zero, you believe that that's enough for you to win.
15 And it may be that -- say RFC -- what, two billion dollars,
16 same intercompany claim -- I don't know what the -- what
17 creditor claims have been filed against RFC.

18 I mean, you may be able to deal with this issue --
19 we'll talk a little bit about discovery and trial even at
20 confirmation -- with a rifle shot and not a blunderbuss. If
21 you pick -- if you think that you've got -- that there are
22 three of the intercompany claims that you believe beyond
23 question are what they purport to be and there's no basis to
24 settle them at zero, you'll focus on those at trial and not
25 have to go through fifty-one affiliates and -- I'm not going to

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26

1 tell you right now -- I may tell you later but I'm not going to
2 tell you right now how the trial ought to proceed. Okay. But
3 what I am telling everybody -- and so -- look, you raise the
4 issue in counterclaims that -- and look, I'm telling you, I
5 didn't read them yet, okay? I will, okay? But I haven't
6 read -- I got a lot going on. I haven't read the latest round
7 of pleadings, okay? I will take you at your word and, I think,
8 Mr. Shore's word, that you've raised issues in counterclaims.
9 And again, I don't know whether they're compulsory or not. I
10 don't get particularly excited that you raised issues in the
11 counterclaims, that are going to ultimately get resolved as
12 part of a plan confirmation trial rather than this trial, okay?

13 What I want to avoid is -- if possible, is injecting
14 issues into this first trial that are going to necessarily
15 bring to the table every other creditor constituency, because
16 these are issues that apply across the board and not unique to
17 you. The same applies to the debtor: If they amended their
18 complaint and they added a Count V that you believe -- just a
19 count to say -- determine that you're undersecured, I don't
20 think is the problem, Mr. Golden. It may be, if there are
21 three reasons they think that certain collateral isn't part of
22 your collateral package, for example -- I don't see what
23 prevents the Court from resolving that issue, okay?

24 MR. GOLDEN: But they haven't pled it that way, Your
25 Honor.

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27

1 THE COURT: Well --

2 MR. GOLDEN: That's how the committee --

3 THE COURT: Good, and you didn't plead your
4 counterclaims in such a way as to exclude from the trial -- the
5 first-phase trial of the adversary proceedings, a range of
6 issues. That's fine. Okay. I -- we'll deal with it. I
7 understand your point.

8 Anything else? Any other point you have, Mr. Golden?

9 MR. GOLDEN: Well, Your Honor, I do want to point out
10 that, while we understand the process, we understand the
11 procedures, this is asking the JSNs basically to defend against
12 the debtor's lawsuit with its left hand tied behind its back.

13 If you allow me to continue, Your Honor.

14 We think -- I know it's a matter of dispute; we've
15 laid it out -- that we have a claim on the intercompany claims.

16 THE COURT: And you'll get a chance --

17 MR. GOLDEN: I --

18 THE COURT: Can you -- are you listening --

19 MR. GOLDEN: I am.

20 THE COURT: -- at all?

21 MR. GOLDEN: Your Honor --

22 THE COURT: Are you listening?

23 MR. GOLDEN: Your Honor, I am.

24 THE COURT: You'll get your chance to raise that
25 issue.

RESIDENTIAL CAPITAL, LLC, ET AL.

28

1 MR. GOLDEN: I appreciate that, Your Honor. I'm --

2 THE COURT: You're not going to get a chance to raise
3 it in this phase-one trial, Mr. Golden.

4 MR. GOLDEN: I understand that, Your Honor. What I
5 wanted to point out is, if this was simply in a vacuum an
6 adversary proceeding brought by the debtors to determine
7 whether we're undersecured or not, we would assert all of our
8 defenses and there'd be a certain burden of proof on both
9 sides. Having manipulated the process --

10 THE COURT: Oh, come on --

11 MR. GOLDEN: Your Honor, can I --

12 THE COURT: -- Mr. Golden, spare me.

13 MR. GOLDEN: Okay. Your Honor, the 9019 has a much
14 different, as the Court is well aware, burden of proof --

15 THE COURT: Yes, and if they get it approved, then
16 you're going to come out on the short end, and what can I tell
17 you? We'll deal with that when I get to decide whether the
18 9019 gets approved. You don't try the merits of the issues on
19 a 9019. Okay, you don't have a mini-trial. The law in the
20 Second Circuit is quite clear on that. There's a very
21 different standard. You may not like it; that's the standard.

22 MR. GOLDEN: That's fine, Your Honor, and we are well
23 aware of that. But, for example, Your Honor, if we claimed we
24 had a truck as a piece of our collateral, and the debtor said,
25 as part of their plan process, they've determined, as a

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29

1 settlement, that there is no value in that truck --

2 THE COURT: You don't have a pledge. You told me
3 already you do not have a pledge of a note that reflects an
4 intercompany claim. Okay? You can't tie the hands of the
5 debtor in resolving all issues that relate to disputed issues
6 between all creditor constituencies and among all debtors. You
7 may not like that, but that's the way it goes, Mr. Golden.
8 You'll make those arguments at the time of plan confirmation,
9 and you may prevail on it and you may not. The debtors have --
10 the debtors are going to have a hard time -- a harder time when
11 it comes to a contested confirmation hearing over approval of
12 plan -- of settlements incorporated in the plan, as to which
13 you're not consenting creditors. But I'll deal with it then.

14 Anything else at this point?

15 MR. GOLDEN: No, sir.

16 THE COURT: Anybody else wish to be heard?

17 Mr. Eckstein.

18 MR. ECKSTEIN: Your Honor, good morning. Kenneth
19 Eckstein on behalf of the creditors' committee. I don't think
20 there's a lot more to say. I think the process, Your Honor, as
21 confirmed, is the process that we had understood was the way to
22 proceed. I think we need to make sure we appreciate that there
23 are many issues that we hear from the JSNs are -- need to be
24 resolved; and they believe, if they're resolved, it will
25 demonstrate that they were oversecured. And I believe that the

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30

1 adversary proceeding that's scheduled to be tried in October is
2 intended to deal with several issues, that have nothing to do
3 with intercompany claims, that we agree should be resolved.
4 And as we have said time and again, the plan will provide that,
5 in the event the Court rules that they are oversecured based
6 upon their theory, the plan will provide for them to receive
7 post-petition interest.

8 We wholeheartedly believe that the resolution of the
9 intercompany claims is not being done in a vacuum. The
10 resolution of the intercompany claims is being done in the
11 context of a global plan that pays the JSNs in full, in cash,
12 on the effective date of their pre-petition claim. That's very
13 important because what will become clear, I believe, at the
14 October trial is that, separate and apart from the AFI
15 settlement, all the other assets of the estate, even if the
16 JSNs' views of intercompany claims were given complete credit
17 the way they view them, the JSNs ultimately would not be
18 oversecured. But that's something the Court can hear, and we
19 can arm-wrestle over even that in connection with the trial.

20 But the resolution of the intercompany claims in the
21 plan, as the plan, the disclosure statement and the PSA all lay
22 out, is being done in the context of a resolution of a myriad
23 of issues in this case, including subs, the consolidation,
24 including the litigations over waivers of billions of dollars
25 of claims -- of intercompany claims that were on the books and

RESIDENTIAL CAPITAL, LLC, ET AL.

31

1 have now been expunged, and all of the litigations that would
2 have to get dealt with absent the global settlement.

3 And the question will be whether or not -- in the
4 context of the plan where the JSNs are being paid in full their
5 entire pre-petition debt plus accrued pre-petition interest, is
6 the resolution reasonable. And that's something that the Court
7 can determine in connection with confirmation. And if we can't
8 resolve the matter between now and confirmation -- needless to
9 say, a contested confirmation is difficult, and -- but there's
10 no other way to deal with it; either we're going to resolve the
11 issues or we're going to deal with them at confirmation.

12 But I think it's important to make clear, number one,
13 that we're not going to litigate the intercompany claim dispute
14 in connection with the adversary proceeding, which I think that
15 is clear, and number two, we think it is important to confirm
16 that we're not going to have to constantly shadowbox with
17 suggestions that there are conflicts and that the debtor can't
18 proceed and the debtor's counsel can't proceed to deal with
19 confirmation. That was a suggestion that was raised in the
20 correspondence and, as I understood it, that's what provoked in
21 part the need for the conference was to eliminate the
22 suggestion that somehow there is a conflict that is overhanging
23 the debtor's ability to proceed.

24 The reality is, the PSA, as the JSNs know, has the
25 support of the constituencies of every debtor. We expect, and

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32

1 the plan contemplates, that the plan will have the support of
2 all of the unsecured creditors of each of the debtors. And the
3 JSNs are being paid in full. This is a case where there are no
4 debtor conflicts; and to suggest them, we think, is injecting
5 an improper --

6 THE COURT: Well, if the --

7 MR. ECKSTEIN: -- issue.

8 THE COURT: -- if the JSNs are entitled to post-
9 petition interest, they're not being paid in full.

10 MR. ECKSTEIN: But --

11 THE COURT: Okay, so we'll --

12 MR. ECKSTEIN: And that'll be provided for.

13 THE COURT: -- the Court'll decide it.

14 MR. ECKSTEIN: And that'll be provided for.

15 THE COURT: Okay. All right.

16 MR. ECKSTEIN: But I think that's what we just --

17 THE COURT: All right.

18 MR. ECKSTEIN: -- wanted to clarify.

19 THE COURT: Anything else -- anybody else want to be
20 heard?

21 MR. ECKSTEIN: Thank you, Your Honor.

22 THE COURT: Mr. Walper, do you want to be heard? You
23 got up early for this. Mr. Walper, are you on the phone?

24 MR. WALPER: Yes, I am, Your Honor. And I have
25 nothing to add. And thank you for your time.

RESIDENTIAL CAPITAL, LLC, ET AL.

33

1 THE COURT: Okay. Mr. Shore, briefly.

2 MR. SHORE: Just hopefully something constructive,
3 Your Honor. We'll make a proposal for the debtors to deal with
4 the phase-one case --

5 THE COURT: I'm going to give you some very specific
6 instructions about how we're going to proceed.

7 MR. SHORE: Very good, Your Honor.

8 THE COURT: Okay? All right, the Court has reviewed:
9 the June 26th letter from Mr. Shore to Mr. Lee; the June 2nd
10 letter from Mr. Lee to the Court that attached the June 26
11 letter; and the July letter from Mr. Shore to the Court.
12 First, I don't intend to resolve any discovery disputes during
13 this conference. During this conference, which is on the
14 record -- I want -- I have explored briefly each side's view
15 about the issues that should be addressed in the phase-one
16 trial of the two adversary proceedings, and what should be
17 addressed during the plan confirmation hearing. As I said
18 before, I haven't had an opportunity to review the latest round
19 of pleadings yet.

20 What I previously stated at other hearings, and I
21 don't know whether there was a transcript, is that the phase-
22 one trial should deal with issues specific to the junior
23 secured noteholders, while the confirmation trial should
24 address issues relating to all creditor constituencies,
25 including the issues arising from the proposed global

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34

1 settlement in the plan term sheet but not yet reflected in the
2 plan, which is supposed to be filed this afternoon. That's my
3 desire about how to proceed. And I understand the devil may be
4 in the details. Also because of the compressed time frame in
5 which all this is occurring, I want to avoid duplication of
6 discovery in connection with the phase-one trial and the
7 confirmation hearing.

8 All right. The proposed global settlement included in
9 the plan term sheets will have to satisfy the Rule 9019
10 standards for approval of settlements as well as plan
11 confirmation standards. In connection with approval of a 9019
12 settlement, the Court does not try the merits of the issues
13 that have been settled. As a result, the discovery in
14 connection with a 9019 motion should not involve the same scope
15 of discovery as if issues were being tried on the merits.
16 Since no plan has yet been filed, it's premature to address the
17 details of the discovery plan in connection with a contested
18 plan confirmation hearing; that'll have to be addressed in the
19 first instance by the parties and, to the extent they can't
20 agree, by the Court.

21 With respect to a discovery plan for the adversary
22 proceedings, the parties need promptly to address a proposed
23 discovery plan to present to the Court. I've already set forth
24 a schedule in the case management and scheduling order that's
25 been entered. In connection with the discovery plan, I want

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35

1 the parties to negotiate -- this is -- and there're two things
2 I'm going to want from you all: I want you to negotiate a
3 statement of the issues to be adjudicated in the phase-one
4 trial. The issues for the phase-one trial should be issues
5 specific to the issues with the junior secured noteholders.
6 The interdebtor claims, as I said, will be part of the plan
7 confirmation hearing.

8 To the extent the parties cannot agree on a statement
9 of issues for the phase-one trial, the parties need to submit
10 counterstatements. Additionally, to the extent the parties
11 can't agree on a discovery plan for phase one, the parties
12 should submit proposed counterplans. All plans should be
13 consistent with the time schedule set forth in the Court's
14 prior case management order. The fact that issues have been
15 raised by counterclaims does not mean the issues will be part
16 of the phase-one trial. I can bifurcate, okay? Whether all
17 the counterclaims had to be asserted now, I don't know. Okay?
18 They have been asserted. That doesn't particularly trouble me.
19 The fact the debtors amended the adversary complaint to add
20 additional claims doesn't particularly trouble me. It doesn't
21 mean that those issues all get resolved as part of this phase-
22 one trial.

23 So you need, in the first instance, to try and
24 agree -- and I think this is where you were headed,
25 Mr. Shore -- to try and agree on the statement of the issues

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36

1 that are going to be resolved as part -- addressed and resolved
2 as part of the phase-one trial. And if you can't agree, you'll
3 submit counterstatements and I'll decide what's going to be
4 heard, so everybody's on the same page.

5 Okay. I want to impose a deadline for submitting the
6 statement of issues and a discovery plan. Rather than simply
7 picking a date -- and I have but I'm not going to give it -- I
8 want you to try and do that. I'm mindful of the fact we're on
9 a compressed time frame for the whole case. This is the 4th of
10 July Weekend. But in the first instance, why don't you see if
11 you can agree on when you can sit down, exchange drafts, see if
12 you can resolve the statement of issues.

13 Okay. Now, with respect to the exchange of views in
14 the correspondence regarding alleged conflicts, I don't intend
15 to address the issues in the absence of any properly filed
16 motions. But I find the length and tone of the correspondence
17 I've been receiving troubling. I don't intend to allow the
18 progress of this case to be slowed down by the exchange of six-
19 page single-spaced letters. Issues in this case will be
20 resolved on the merits. I don't intend to permit any party to
21 create a smokescreen or a sideshow that detracts from resolving
22 the issues in the case. If any party believes that counsel or
23 professionals should be disqualified or recused in whole or in
24 part, the parties will either resolve the issues consensually
25 now, or raise the issues with the Court in a properly filed

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37

1 motion. Because of the compressed time schedule, I'm prepared
2 to hear such motion on shortened notice.

3 If you sleep on your rights, you're going to lose
4 those rights. I don't plan to allow this issue to fester in
5 the case. So if you're going to raise them, Mr. Shore, you
6 better -- you've raised them already but, if you're going to --
7 if you really think that I should enter an order that recuses,
8 in whole or in part, the debtor's counsel or the CRO who was
9 appointed as an independent fiduciary not beholden to the
10 creditors of any particular one of the fifty-one debtors, go
11 ahead and make your motion, and do it quickly. And those who
12 are opposing it will respond.

13 The fact of the matter is that the proposed plan is
14 not solely being proposed by the debtors; it's also being
15 proposed by the committee. And I know you've taken your
16 potshots at the committee as well, Mr. Shore, in your
17 correspondence, but there are lots of creditor constituencies,
18 lots of folks who've signed on to the PSA reflecting many
19 different constituencies.

20 But, okay, the sniping has got to stop, okay? As far
21 as I'm concerned, for now, the debtor, it's business as usual,
22 Mr. Lee, for Mr. Kruger and Morrison & Foerster. If the junior
23 secured noteholders' counsel -- the ad hoc committee's counsel
24 is going to raise this issue, they better do it soon.

25 With respect to issues concerning the mediation,

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38

1 including the scope and content of any confidentiality
2 agreement order, as I've said before, this is a matter properly
3 raised with Judge Peck. I will not enter any order in
4 connection with the mediation that is not in form and substance
5 acceptable to him. All right? I indicated at the last
6 conference that I wanted to be able to speak with Judge Peck
7 regarding the proposed confidentiality order, the so-called
8 VITRA order that was submitted. I had a brief conversation
9 with Judge Peck about it; he made his views quite clear, and I
10 know he did so in the e-mail response that he -- I think was
11 circulated to all of you.

12 So I said, when I first appointed him as the mediator,
13 I was leaving those issues to him. And I believe, as a judge
14 sitting on this court, he's perfectly approp -- he is the
15 appropriate one to decide what confidentiality order should be
16 entered in connection with the mediation. I know in
17 Mr. Shore's reply from last night that he at least addresses
18 that some of the holders are -- of the junior secured notes,
19 are apparently prepared to participate in the mediation even if
20 it restricts their ability to trade. I'm not getting involved
21 in the issues regarding the mediation. Judge Peck is able and
22 willing to continue his role as a mediator. A lot's been
23 accomplished. Much more remains to be done.

24 Okay. The only other thing I said is that the
25 conference on the 9th, instead of being on the phone, I want it

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39

1 here. Ordinarily, as you know, I do discovery conferences on
2 the phone. Hopefully you will all resolve the discovery
3 disputes before then; today was not the time to do it. But I
4 did want to address the issues about -- to make clear what the
5 phase-one trial should encompass and what should be encompassed
6 within the confirmation hearing.

7 We're adjourned.

8 (Whereupon these proceedings were concluded at 10:51 AM)

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C E R T I F I C A T I O N

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I, David Rutt, certify that the foregoing transcript is a true
and accurate record of the proceedings.

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DAVID RUTT

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AAERT Certified Electronic Transcriber CET**D-635

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Date: July 3, 2013

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July 3, 2013

A	23:21,22,23;25:12; 27:5;28:6;30:1; 31:14;33:16;34:21; 35:19	7:23	aside (1) 24:3	Berkshire (1) 4:12
	ability (3) 8:1;31:23;38:20	always (1) 23:17	aspect (1) 16:11	best (1) 9:15
able (4) 7:1;25:18;38:6,21	advice (1) 15:14	amended (3) 23:22;26:17;35:19	assert (6) 16:17;18:10,11,15; 24:9;28:7	better (2) 37:6,24
absence (1) 36:15	advocate (1) 13:25	Americas (1) 4:5	asserted (3) 18:16;35:17,18	beyond (2) 10:3;25:22
absent (1) 31:2	affected (1) 18:9	among (2) 14:9;29:6	asserting (1) 24:4	bifurcate (3) 17:17;23:3;35:16
absolutely (1) 6:8	affecting (2) 17:24;18:20	amount (2) 10:15;24:2	assets (1) 30:15	bifurcated (1) 17:15
abstain (1) 22:24	affects (2) 17:7;22:10	Angeles (1) 4:15	assist (1) 9:10	bifurcating (1) 23:5
abstention (2) 23:1,2	affiliates (3) 19:9;24:19;25:25	apart (1) 30:14	assume (1) 22:22	billion (7) 8:17;12:18;19:16, 17,19;20:7;25:15
abundantly (2) 6:1;7:11	AFI (2) 10:16;30:14	apparently (1) 38:19	attached (2) 14:11;33:10	billions (1) 30:24
acceptable (1) 38:5	afternoon (1) 34:2	appear (2) 10:18;14:21	attack (5) 9:2,2,21,23;21:17	bit (2) 6:11;25:19
accomplished (1) 38:23	Again (5) 8:9,15;10:2;26:9; 30:4	applicable (1) 16:16	attempts (1) 5:23	blunderbuss (1) 25:20
accrued (3) 6:21;9:17;31:5	against (4) 24:6;25:8,17;27:11	application (1) 9:9	Attorneys (2) 4:3,12	board (1) 26:16
across (1) 26:16	agree (9) 17:13;30:3;34:20; 35:8,11,24,25;36:2, 11	applies (1) 26:17	authority (2) 9:11;17:25	bona (1) 10:10
actually (3) 7:24;11:22;18:25	agreed (4) 9:16,17;14:13;20:4	appoint (1) 9:9	Avenue (2) 4:5,13	books (1) 30:25
Ad (3) 4:3;11:2;37:23	agreement (9) 6:10;7:22;9:1,15; 10:13;18:1;19:18; 20:25;38:2	appointed (2) 37:9;38:12	avoid (3) 15:10;26:13;34:5	both (1) 28:8
add (3) 18:17;23:11;35:19	ahead (4) 5:10;17:20,25; 37:11	appointment (1) 9:4	aware (2) 28:14,23	bought (1) 12:3
added (1) 26:18	air (1) 12:11	appreciate (2) 28:1;29:22	B	brief (1) 38:8
additional (1) 35:20	allegations (1) 10:8	approp (1) 38:14		briefly (2) 33:1,14
Additionally (1) 35:10	alleged (1) 36:14	appropriate (4) 8:14;16:15,16; 38:15	back (5) 7:4;9:19;11:19,22; 27:12	bring (1) 26:15
addl (1) 32:25	allocate (1) 14:5	Approval (4) 16:19;29:11;34:10, 11	bad (1) 14:2	brought (1) 28:6
address (11) 5:25;7:23;8:14; 11:10;14:25;15:2; 33:24;34:16,22; 36:15;39:4	allocated (1) 14:3	approve (2) 15:12;17:25	based (4) 9:7;11:25;15:14; 30:5	burden (2) 28:8,14
addressed (4) 33:15,17;34:18; 36:1	allocation (1) 10:17	approved (10) 6:10;9:1,14;10:13; 12:4;14:12,17;21:14; 28:15,18	basically (1) 27:11	business (1) 37:21
addresses (2) 8:15;38:17	allow (3) 27:13;36:17;37:4	approving (2) 16:13;18:9	basis (1) 25:23	C
Adelphia (1) 7:10	allowable (1) 7:12	argument (1) 21:21	become (1) 30:13	
adequate (1) 15:11	allowance (1) 16:10	arguments (2) 17:9;29:8	behalf (4) 9:11;11:2;13:25; 29:19	CA (1) 4:15
adjourned (1) 39:7	Ally (1) 14:3	arises (1) 11:15	behind (1) 27:12	California (1) 5:18
adjudicated (1) 35:3	alone (2) 6:23;8:1	arising (1) 33:25	beholden (1) 37:9	call (1) 12:2
adversary (25) 5:4,24;6:2;7:2,13, 18;8:21;9:18;10:2,3, 9,19;17:10;22:21;	alter (1) 16:20	arm-wrestle (1) 30:19	believes (1) 36:22	called (1) 13:13
	although (1)	arose (1) 11:6	below (1) 21:13	came (3) 8:25;11:19,22
			bench (1) 18:8	can (30) 5:18;6:7;9:21,22, 24;10:11;12:9;14:23; 15:12;16:3,3,11,17; 17:13,14,18;19:5;

July 3, 2013

22:4,5,18;27:18; 28:11,16;30:18,19; 31:7;35:16;36:11,11, 12 Capital (2) 5:3;6:15 CASE (18) 4:2;6:20,21;9:14; 11:2,15;16:6;24:16; 30:23;32:3;33:4; 34:24;35:14;36:9,18, 19,22;37:5 cases (3) 7:8;11:18;14:6 cash (1) 30:11 cents (1) 20:7 certain (2) 26:21;28:8 certainly (2) 14:24;17:24 challenge (1) 20:6 challenging (1) 10:10 chambers (1) 7:12 chance (3) 27:16,24;28:2 Charter (1) 7:9 Chris (1) 11:1 CHRISTOPHER (1) 4:8 Circuit (1) 28:20 circulated (1) 38:11 circumstances (1) 11:6 Civil (1) 16:17 claim (20) 12:18,20;17:23; 19:10,13,17,17,19, 21;20:7,17;24:2,5,24; 25:10,16;27:15;29:4; 30:12;31:13 claimed (1) 28:23 claims (55) 6:15,19;8:2,5,6,8,8, 9,9,13,17,17;9:5; 10:15,16;11:25;12:1, 5;13:12,16;14:1,2; 15:5,15,23;16:17; 17:7;18:3;19:3,5,16; 20:10;21:14,23,24; 22:10;23:19,24;24:9, 11,15,20;25:13,17, 22;27:15;30:3,9,10,	16,20,25,25;35:6,20 clarify (1) 32:18 clear (19) 5:13;6:1,8;7:11; 8:21;9:3,8;16:23,23; 17:16;18:19,20; 23:17;28:20;30:13; 31:12,15;38:9;39:4 clearer (1) 22:4 client (1) 14:1 clients (1) 14:2 collateral (11) 19:3,7,13;20:18, 20;24:2,8,14;26:21, 22;28:24 committee (5) 20:5;27:2;29:19; 37:15,16 committee's (1) 37:23 company (1) 14:1 complaint (2) 26:18;35:19 complete (1) 30:16 compressed (3) 34:4;36:9;37:1 compromise (2) 12:7;22:3 compromises (2) 6:18,19 compulsory (3) 18:11,14;26:9 concerned (2) 13:22;37:21 concerning (1) 37:25 concluded (1) 39:8 conference (12) 5:15,16;6:2,24; 7:12;11:13;16:14; 31:21;33:13,13;38:6, 25 conferences (1) 39:1 confidentiality (3) 38:1,7,15 confirm (1) 31:15 confirmation (27) 6:7;9:23,24;10:11; 12:5;17:5,14;18:2,4; 22:7,15;25:20;26:12; 29:8,11;31:7,8,9,11, 19;33:17,23;34:7,11, 18;35:7;39:6 confirmed (1)	29:21 conflict (2) 14:5;31:22 conflicts (10) 6:9;10:1,8,12; 11:17;12:10;13:24; 31:17;32:4;36:14 conjure (1) 6:7 connection (13) 5:4;15:23;23:20; 30:19;31:7,14;34:6, 11,14,17,25;38:4,16 consensually (1) 36:24 consent (1) 20:24 consenting (1) 29:13 considering (1) 12:24 considers (1) 12:23 consistent (2) 14:13;35:13 consolidated (1) 7:2 consolidation (1) 30:23 constantly (1) 31:16 constituencies (7) 17:8;22:10;29:6; 31:25;33:24;37:17, 19 constituency (1) 26:15 constructive (1) 33:2 contemplates (1) 32:1 content (1) 38:1 contested (4) 17:4;29:11;31:9; 34:17 context (5) 5:24;15:5;30:11, 22;31:4 continue (2) 27:13;38:22 contrary (1) 13:10 conversation (1) 38:8 copy (2) 7:6,14 core (1) 10:14 correctly (1) 19:14 correspondence (4) 31:20;36:14,16;	37:17 counsel (6) 9:3;31:18;36:22; 37:8,23,23 Count (6) 23:22,24;24:5; 25:8;26:18,19 counterclaim (1) 16:16 counterclaims (18) 7:15,20;8:3;16:5,9, 22;17:12;18:11,15, 25;20:16;22:21;26:4, 8,11;27:4;35:15,17 counterplans (1) 35:12 counterstatements (2) 35:10;36:3 course (1) 24:4 COURT (93) 5:2,9,16,17;7:4; 10:23,25;12:3,22,23, 24;13:3;14:7,11,17, 21,21,25;15:2,12,22; 16:3,11,12,14;17:25; 19:6,20,24;20:1,11, 13,15,21;21:3,5,8,17, 20,25;22:2,4,14,24; 23:1,8,10,13,16,18; 24:10,13;25:2,4,6,9; 26:23;27:1,3,16,18, 20,22,24;28:2,10,12, 14,15;29:2,16;30:5, 18;31:6;32:6,8,11,13, 15,17,19,22;33:1,5,8, 8,10,11;34:12,20,23; 36:25;38:14 Court'll (1) 32:13 Court's (2) 11:9;35:13 cover (3) 8:22;24:17,17 covered (1) 17:19 create (2) 9:25;36:21 credit (1) 30:16 creditor (6) 17:7;25:17;26:15; 29:6;33:24;37:17 creditors (8) 6:14,16;12:11; 19:10;21:12;29:13; 32:2;37:10 creditors' (1) 29:19 cricket (1) 9:20 CRO (3) 9:9;14:16;37:8	cut (1) 6:5 D date (2) 30:12;36:7 day (1) 9:1 deadline (1) 36:5 deal (11) 11:10;25:18;27:6; 28:17;29:13;30:2; 31:10,11,18;33:3,22 dealing (2) 15:5;23:5 dealt (1) 31:2 debt (2) 20:22;31:5 debtor (17) 9:8,12;12:19,20; 13:4;14:8,16,18; 17:14;23:21;26:17; 28:24;29:5;31:17,25; 32:4;37:21 debtor-only (1) 14:10 debtors (27) 5:8;6:17;8:1,18,25; 9:16;12:14;13:4,22; 15:4,10,13;16:1,7; 17:12;20:4,19;21:11; 28:6;29:6,9,10;32:2; 33:3;35:19;37:10,14 debtor's (6) 6:15;11:16;27:12; 31:18,23;37:8 decide (6) 17:20;18:4;28:17; 32:13;36:3;38:15 decided (3) 7:18;14:8,18 decisions (2) 9:11;14:16 declaration (1) 23:24 declarations (1) 7:20 defeat (1) 10:20 defend (3) 24:6;25:8;27:11 defenses (1) 28:8 definitive (2) 15:4,8 demonstrable (1) 11:16 demonstrate (1) 29:25 describes (1)
---	---	--	---	--

July 3, 2013

17:14 desire (1) 34:3 detail (2) 6:4,12 details (2) 34:4,17 determination (6) 8:3;11:25;12:6; 13:15;15:22,25 determine (4) 20:21;26:19;28:6; 31:7 determined (3) 11:21;15:13;28:25 determines (1) 20:18 detracts (1) 36:21 devil (1) 34:3 different (4) 14:17;28:14,21; 37:19 difficult (1) 31:9 diminution (1) 20:19 direct (1) 23:23 direction (5) 6:4,25;7:19;10:7,7 disagreements (1) 10:1 disclosure (5) 6:13;15:6;16:4; 22:23;30:21 disconcerting (1) 8:25 discovery (19) 5:14;7:23;11:8,8, 12,13;25:19;33:12; 34:6,13,15,17,21,23, 25;35:11;36:6;39:1,2 discretion (1) 17:17 disposed (1) 20:20 dispute (3) 19:4;27:14;31:13 disputed (2) 20:22;29:5 disputes (3) 9:10;33:12;39:3 disqualified (1) 36:23 disrupt (1) 7:1 distributable (1) 8:4 district (1) 7:9 document (1)	7:25 dollar (7) 8:18;12:20;19:17, 17,19;20:7,7 dollars (7) 8:17;12:18;20:8, 19,20;25:15;30:24 done (5) 16:12;30:9,10,22; 38:23 doubt (1) 11:8 down (4) 6:22;14:6;36:11,18 dozen (1) 7:20 drafts (1) 36:11 due (1) 24:4 duplication (1) 34:5 during (4) 7:11;33:12,13,17	16:13;18:8;34:25; 38:16 entire (2) 10:20;31:5 entitled (1) 32:8 entity (1) 19:12 equity (6) 19:8,12,13;20:23; 24:18,21 ESQ (2) 4:8,17 estate (1) 30:15 estopped (1) 20:5 even (7) 21:12,22,22;25:19; 30:15,19;38:19 event (1) 30:5 everybody (4) 5:19;21:15;24:1; 26:3 everybody's (1) 36:4 evidence (2) 17:9;18:4 exact (2) 8:4,9 exactly (2) 10:17;23:7 example (6) 19:2,8,16;20:23; 26:22;28:23 exchange (3) 36:11,13,18 excited (1) 26:10 exclude (1) 27:4 expect (2) 6:15;31:25 expense (2) 14:5,6 explain (1) 12:17 explained (1) 24:25 explored (1) 33:14 expression (1) 9:20 expunged (1) 31:1 extent (9) 6:25;17:2,4,11,19; 18:6;34:19;35:8,10 extraneous (1) 11:11	F fact (4) 35:14,19;36:8; 37:13 facts (1) 16:18 faith (1) 9:23 far (1) 37:20 fathom (1) 8:18 Federal (1) 16:16 fester (2) 7:5;37:4 FGIC (2) 8:12,13 fides (1) 10:10 fiduciary (3) 12:12;24:6;37:9 fifty-one (2) 25:25;37:10 file (3) 16:7,8;22:8 filed (9) 7:15;13:18;15:6; 22:21;25:17;34:2,16; 36:15,25 filing (1) 6:13 find (1) 36:16 fine (5) 13:24;18:15;23:6; 27:6;28:22 First (13) 6:1;10:8;12:15; 13:9,11;21:10;25:11; 26:14;33:12;34:19; 35:23;36:10;38:12 first-phase (1) 27:5 flavor (1) 8:2 Floor (1) 4:14 flows (4) 19:19;20:3,6,8 focus (1) 25:24 Foerster (3) 5:8;15:15;37:22 folks (1) 37:18 form (1) 38:4 forth (5) 11:3;13:11;14:14; 34:23;35:13	fourteen (1) 9:13 frame (2) 34:4;36:9 free (1) 8:13 full (5) 19:11;30:11;31:4; 32:3,9 Fundamentally (1) 11:15
	E		G	
	early (2) 11:4;32:23 Eckstein (10) 29:17,18,19;32:7, 10,12,14,16,18,21 effective (1) 30:12 either (5) 11:4,13;22:11; 31:10;36:24 eliminate (1) 31:21 else (9) 18:17;22:18;23:11, 13;27:8;29:14,16; 32:19,19 e-mail (1) 38:10 embodied (6) 7:21,22;9:21; 12:25;17:3;22:8 embodies (1) 6:17 encompass (1) 39:5 encompassed (1) 39:5 end (1) 28:16 England (1) 9:19 enough (2) 7:24;25:14 enter (3) 14:1;37:7;38:3 entered (4)		Gary (1) 5:7 general (1) 20:2 gets (4) 12:19,24;20:7; 28:18 given (2) 9:22;30:16 global (11) 7:21;10:15;18:2, 23;19:1;22:3;23:19; 30:11;31:2;33:25; 34:8 goes (1) 29:7 Golden (26) 23:14,15;24:12,25; 25:3,5,6,7;26:20,24; 27:2,8,9,17,19,21,23; 28:1,3,4,11,12,13,22; 29:7,15 Good (6) 5:7;9:23;14:1; 27:3;29:18;33:7 Grand (1) 4:13 grants (1) 19:23 great (1) 17:17 Group (2) 4:3;11:2 guess (1) 16:3 guidance (3) 5:22;11:9;23:11	
			H	
			hand (1) 27:12 handle (3) 11:12;13:23;23:18 handling (1) 18:22 hands (1) 29:4 happen (1)	

July 3, 2013

12:12 happening (1) 23:9 hard (1) 29:10 harder (1) 29:10 Hathaway (1) 4:12 headed (1) 35:24 hear (8) 11:14;17:8,20; 18:3;22:9;29:23; 30:18;37:2 heard (9) 17:4;18:19;22:11; 23:13,16;29:16; 32:20,22;36:4 hearing (9) 11:24;17:5;22:24; 29:11;33:17;34:7,18; 35:7;39:6 hearings (3) 22:5,16;33:20 himself (1) 15:14 Hoc (3) 4:3;11:2;37:23 holders (1) 38:18 Honor (65) 5:7,11,13,20,21,25; 6:1,9,10,20,25;7:2,3, 6,9,11,14;8:3,5,7,9, 11,20,21;9:1,13,14, 19,25;10:3,6,14,17, 20;11:1,14;12:8,14; 13:6;15:17;16:6,8; 18:19;20:17;21:23; 23:12,15;24:25; 26:25;27:9,13,21,23; 28:1,4,11,13,22,23; 29:18,20;32:21,24; 33:3,7 Honor's (2) 5:22;7:19 hopefully (2) 33:2;39:2 hurdle (1) 17:22	30:13;31:12,15 importantly (1) 21:16 impose (1) 36:5 improper (1) 32:5 improperly (1) 17:24 included (2) 17:2;34:8 includes (1) 24:14 including (5) 18:8;30:23,24; 33:25;38:1 incorporated (1) 29:12 indenture (1) 23:15 independent (3) 18:22;19:1;37:9 indicated (1) 38:5 injecting (2) 26:13;32:4 injection (1) 16:6 insist (1) 10:10 instance (3) 34:19;35:23;36:10 instead (1) 38:25 instructions (1) 33:6 intangible (1) 20:3 intangibles (1) 24:17 intend (9) 7:17,23;11:24; 16:24;17:8;33:12; 36:14,17,20 intended (1) 30:2 intention (1) 23:18 inter (1) 19:3 intercompany (42) 6:19;8:2,4,6;9:5; 10:16;11:25;12:5,18; 13:12;14:1;15:5,15, 23;17:6;18:3;19:3, 10,16,21;20:10; 21:14;23:19,23;24:9, 11,15,19,20,23; 25:13,16,22;27:15; 29:4;30:3,9,10,16,20, 25;31:13 intercreditor (1) 9:10	interdebtor (10) 6:9;9:10;10:1,12; 11:17;12:10;13:23; 14:4;22:9;35:6 interest (8) 6:22,23;9:15,17; 16:10;30:7;31:5;32:9 interests (1) 19:25 into (6) 9:14;18:12;19:17; 21:14;23:23;26:14 involve (1) 34:14 involved (1) 38:20 issue (28) 6:22;8:5;11:15; 13:4,6,6,23;14:10,17; 15:10;17:6,7,9;19:15, 15;20:23;21:5,8; 22:9;23:23;24:16; 25:18;26:4,23;27:25; 32:7;37:4,24 issues (77) 5:23;6:3;7:5;8:16; 10:4,14,17,21;11:8,8, 10,11;14:8,9,18;16:6, 9,21,25,25;17:1,1,2, 11,14,15,17,18,19; 18:6,22,22;19:2; 20:22;21:7,10;23:3, 5;25:12;26:8,10,14, 16;27:6;28:18,29:5, 5,23;30:2,23;31:11; 33:15,22,24,25; 34:12,15;35:3,4,4,5, 9,14,15,21,25;36:6, 12,15,19,22,24,25; 37:25;38:13,21;39:4	35:5;37:22;38:18 K Kenneth (1) 29:18 kind (1) 11:5 Kruger (3) 9:3,9;37:22 Kruger's (1) 15:14 L laid (1) 27:15 large (1) 24:7 larger (1) 17:22 last (6) 6:1;7:16;11:4; 18:18;38:5,17 late (1) 11:4 Later (2) 6:13;26:1 latest (2) 26:6;33:18 law (3) 15:24;16:18;28:19 lawsuit (1) 27:12 lay (1) 30:21 least (3) 6:6;14:12;38:17 leaving (2) 24:3;38:13 Lee (14) 5:6,7,7,11,20; 10:23,24;11:7;14:7; 15:21;18:7;33:9,10; 37:22 left (1) 27:12 legal (5) 11:25;13:16;15:16, 24;24:3 length (1) 36:16 less (1) 24:2 letter (10) 6:5;7:7;11:3,7,11; 15:19;33:9,10,11,11 letters (2) 6:6;36:19 levels (1) 21:15 lien (3) 20:2,4,8	lies (1) 12:9 limiting (1) 16:14 listening (2) 27:18,22 litigate (2) 10:21;31:13 litigated (1) 13:7 litigations (2) 30:24;31:1 little (2) 6:11;25:19 LLC (2) 19:18;20:8 LLP (1) 4:2 look (2) 26:3,4 Los (1) 4:15 lose (1) 37:3 losing (1) 13:22 lot (2) 26:6;29:20 lots (2) 37:17,18 lot's (1) 38:22 loud (2) 18:20;23:17 M makes (1) 12:11 making (1) 13:15 management (2) 34:24;35:14 manipulated (1) 28:9 many (5) 16:1;17:7;22:10; 29:23;37:18 math (2) 13:17,17 mathematical (1) 11:21 matter (5) 22:13;27:14;31:8; 37:13;38:2 matters (3) 7:13,24;10:8 may (21) 6:10;18:14;19:20; 21:6,6;22:15;23:2,4; 24:16,17,17;25:11, 15,18;26:1,20;28:21; 29:7,9,9;34:3
I ignore (1) 7:19 ignores (1) 6:4 immediately (1) 13:13 impaired (1) 6:16 important (3)		J JSNs (16) 16:15,20;17:1,8,11, 19;18:1,10;27:11; 29:23;30:11,17;31:4, 24;32:3,8 JSNs' (1) 30:16 JSN's (1) 16:20 Judge (9) 6:18;9:2,4,7;38:3, 6,9,13,21 July (2) 33:11;36:10 June (3) 33:9,9,10 Junior (17) 4:3;7:6,14,17;8:11; 9:6,16;10:4,9;23:16, 25;24:5,8;33:22;		

July 3, 2013

maybe (1) 14:23 mean (8) 13:15;17:15,16,21; 24:20;25:18;35:15, 21 mechanisms (2) 18:21,21 mediate (1) 9:5 mediation (10) 6:18;9:7;10:21; 11:12,13;37:25;38:4, 16,19,21 mediator (3) 9:4;38:12,22 meet (1) 15:18 merit (3) 12:1;13:16;15:16 merits (4) 28:18;34:12,15; 36:20 message (1) 8:22 million (5) 8:18;12:20;20:8, 18,20 mindful (1) 36:8 mini-trial (1) 28:19 monoline (1) 8:8 months (1) 9:14 more (7) 6:4,11;8:7,10; 21:16;29:20;38:23 morning (3) 5:7;11:5;29:18 Morrison (3) 5:8;15:15;37:22 most (1) 18:13 motion (4) 34:14;37:1,2,11 motions (1) 36:16 move (1) 22:24 much (3) 12:8;28:13;38:23 multiple (1) 18:21 MUNGER (1) 4:11 must (1) 12:4 muster (1) 21:6 myriad (1) 30:22	<div>N</div>	objections (3) 6:7;9:25;22:6 objectors (1) 17:23 obligations (1) 15:25 occurred (1) 16:14 occurring (1) 34:5 o'clock (1) 5:19 October (2) 30:1,14 offered (1) 18:21 OLSON (1) 4:11 once (1) 10:18 one (21) 6:18,22;9:4;12:17, 18;13:25;16:1,22,25; 19:15,22;21:8,11,15; 22:17;31:12;33:22; 35:11,22;37:10; 38:15 one's (1) 22:5 Only (2) 22:20;38:24 OpCos (1) 21:13 OpCo's (1) 14:6 open-ended (1) 11:9 opportunity (1) 33:18 oppose (2) 18:1,2 opposing (1) 37:12 opposition (1) 22:12 order (12) 16:13;18:8,8; 22:18;34:24;35:14; 37:7;38:2,3,7,8,15 ordered (1) 16:8 Ordinarily (1) 39:1 others (1) 18:20 ought (1) 26:2 out (11) 7:7;10:12;11:15, 18;12:12;16:6;27:9, 15;28:5,16;30:22 outset (2) 5:13;11:3	outside (1) 10:22 over (4) 7:19;29:11;30:19, 24 overhanging (1) 31:22 oversecured (3) 29:25;30:5,18 overwhelming (1) 6:16	Peck's (2) 6:18;9:4 pending (1) 7:8 per (1) 23:21 perfectly (1) 38:14 perhaps (1) 10:7 permit (1) 36:20 pertains (1) 11:7 petition (2) 6:23;32:9 phase (4) 16:24;21:8;25:11; 35:11 phase- (2) 33:21;35:21 phase-one (10) 28:3;33:4,15;34:6; 35:3,4,9,16;36:2;39:5 phone (3) 32:23;38:25;39:2 pick (1) 25:21 picking (1) 36:7 piece (5) 18:19;24:13,22,23; 28:24 place (2) 22:21;23:7 plan (70) 5:23;6:10,13,14,16, 17:7;21:22;8:5,6,10, 16:9;1,14,21;10:5,10, 13,17,22;12:4,10,25; 14:13;15:6,18,22; 16:4,7;17:3,14,21; 18:1,4;22:6,8,14,14, 23;23:5,20;26:12; 28:25;29:8,12,12; 30:4,6,11,21,21;31:4; 32:1,1;33:17;34:1,2, 9,10,16,17,18,21,23, 25;35:6,11;36:6; 37:4,13 plan-related (1) 8:16 plans (1) 35:12 playbook (3) 7:8;8:11,24 plead (1) 27:3 pleading (1) 16:15 pleadings (3) 18:13;26:7;33:19 Please (2)
	<div>P</div>	package (2) 19:13;26:22 page (2) 36:4,19 paid (5) 19:11;20:7;31:4; 32:3,9 paper (3) 24:13,22,23 par (2) 6:21;9:17 paraphrasing (1) 23:24 parent (1) 21:14 part (27) 8:6,10,24;10:2,9, 19;17:23;18:4;19:6, 11,13;21:13;22:1,14; 23:19;24:8;26:12,21; 28:25;31:21;35:6,15, 21;36:1,2,24;37:8 participate (3) 5:18;9:6;38:19 particular (4) 11:6;17:18;21:24; 37:10 particularly (4) 8:25;26:10;35:18, 20 parties (13) 14:9,12;16:20; 17:13;18:23;34:19, 22;35:1,8,9,10,11; 36:24 party (2) 36:20,22 pass (1) 21:6 pay (2) 9:16,17 paying (2) 6:20,21 payment (1) 24:20 pays (1) 30:11 Peck (6) 9:2,7;38:3,6,9,21		
	<div>O</div>	object (2) 8:19;11:5 objected (1) 8:12 objection (2) 22:7,8		

July 3, 2013

5:2;12:17 pled (1) 26:24 pledge (10) 19:8,20,24;24:10, 16,18,21,22;29:2,3 pledges (1) 19:22 plus (4) 6:21;9:17;19:17; 31:5 point (10) 12:24;15:9;20:4,5; 25:13;27:7,8,9;28:5; 29:14 pointed (1) 16:6 points (1) 6:11 position (8) 15:16;18:14,19; 19:7,9;25:3,4,7 positions (1) 11:16 possible (1) 26:13 post (1) 6:21 post- (2) 6:22;32:8 post-petition (4) 6:22;9:17;16:10; 30:7 potshots (1) 37:16 prejudice (2) 6:6;9:24 premature (1) 34:16 prepared (2) 37:1;38:19 pre-petition (3) 30:12;31:5,5 present (1) 34:23 preserve (1) 13:20 pretty (1) 17:16 prevail (2) 9:18;29:9 prevents (1) 26:23 previously (1) 33:20 principal (1) 6:17 prior (3) 16:14;22:5;35:14 priority (1) 10:15 problem (4) 12:9,16;23:20;	26:20 problems (1) 21:16 procedural (1) 18:21 Procedure (3) 16:17;22:20;23:6 procedures (2) 17:16;27:11 proceed (8) 5:9;26:2;29:22; 31:18,18,23;33:6; 34:3 proceeding (17) 5:24;6:2;7:3,13,18; 8:22;10:2,4,9,19; 15:7;23:21,22,23; 28:6;30:1;31:14 proceedings (6) 5:4;17:10;27:5; 33:16;34:22;39:8 process (8) 9:2;12:13;23:20; 27:10;28:9,25;29:20, 21 product (1) 6:18 professionals (1) 36:23 progress (1) 36:18 promptly (1) 34:22 proof (2) 28:8,14 properly (4) 18:6;36:15,25;38:2 proponents (2) 17:21,22 proposal (2) 23:4;33:3 propose (2) 12:4;13:24 proposed (11) 11:19,20;12:15; 33:25;34:8,22;35:12; 37:13,14,15;38:7 proposing (1) 12:14 proposition (1) 24:3 protection (1) 15:11 provide (3) 13:18;30:4,6 provided (3) 7:6;32:12,14 provoked (1) 31:20 PSA (15) 11:23,24;13:9,10; 14:10,11,12,13;16:7, 13,19;18:9;30:21;	31:24;37:18 purport (1) 25:23 purpose (2) 10:21;15:19 pursuant (1) 19:18 push (1) 14:5 put (1) 16:11 puts (1) 23:23 Q quickly (1) 37:11 quite (2) 28:20;38:9 R raise (9) 5:23;17:11;18:6; 26:3;27:24;28:2; 36:25;37:5,24 raised (10) 15:10;16:22;17:19; 18:7;26:8,10;31:19; 35:15;37:6;38:3 raises (1) 24:16 range (1) 27:5 rather (5) 5:17;8:16;11:9; 26:12;36:6 read (4) 18:13;26:5,6,6 reading (1) 16:4 reality (1) 31:24 really (3) 11:8;13:14;37:7 reason (3) 6:24;15:11,12 reasonable (1) 31:6 reasons (2) 25:10;26:21 receive (1) 30:6 received (1) 7:25 receiving (1) 36:17 recent (1) 18:13 recharacterized (1) 20:22 record (9)	5:10;8:1,15;13:10, 21;22:5,17,17;33:14 recused (1) 36:23 recuses (1) 37:7 Refer (1) 7:9 referred (1) 16:24 reflected (1) 34:1 reflecting (1) 37:18 reflects (2) 24:23;29:3 refused (1) 9:6 regarding (4) 10:8;36:14;38:7,21 rejected (1) 18:24 relate (3) 7:20;18:22;29:5 related (1) 6:2 relates (2) 6:19;10:4 relating (2) 16:9;33:24 relation (1) 7:2 remains (1) 38:23 repeat (1) 10:7 reply (2) 11:24;38:17 report (1) 11:23 represented (1) 21:12 request (1) 11:9 requested (2) 6:24;16:7 requests (1) 7:25 requires (1) 24:5 ResCap (3) 19:8,18;20:8 reserved (1) 9:22 Residential (1) 5:3 resolution (5) 30:8,10,20,22;31:6 resolve (10) 8:2;12:11;17:9,18; 31:8,10;33:12;36:12, 24;39:2 resolved (16)	7:8;8:10;13:9;14:9, 19;16:22;19:2;25:12; 26:11;29:24,24;30:3; 35:21;36:1,1,20 resolves (1) 8:12 resolving (4) 9:10;26:23;29:5; 36:21 respect (15) 10:7;11:12,16,17; 13:21;15:11;16:5,9; 17:1,9;18:3,20; 34:21;36:13;37:25 respective (1) 15:25 respects (1) 13:8 respond (5) 5:22;13:7;18:18; 22:22;37:12 response (5) 13:11,14,19;15:20; 38:10 rest (1) 16:12 restricts (1) 38:20 result (1) 34:13 review (1) 33:18 reviewed (1) 33:8 revolved (1) 6:9 RFC (5) 19:16;20:3;21:11; 25:15,17 rifle (1) 25:20 right (16) 5:2;9:22;18:12; 20:12;21:3,7,19; 22:10;23:13;26:1,2; 32:15,17;33:8;34:8; 38:5 rights (8) 13:20;15:25;16:20; 17:24;18:9,20;37:3,4 RMBS (1) 8:8 role (1) 38:22 round (5) 5:23,23;18:13; 26:6;33:18 Rule (1) 34:9 rules (4) 9:7,8;16:16;30:5 run (1) 9:2
--	--	---	---	--

July 3, 2013

running (1) 12:18	23:6	33:14	8:18	support (11) 6:10,14,16;7:21; 9:1,15;10:13;14:13; 22:11;31:25;32:1
runs (1) 12:20	setting (1) 11:5	sideshow (1) 36:21	stage (1) 14:9	supportable (1) 15:24
S	settle (4) 19:3,4;20:17;25:24	signed (2) 14:12;37:18	standard (2) 28:21,21	supported (1) 16:18
	settled (9) 8:6;12:19;20:23; 24:21;2,22,23,24; 34:13	simply (2) 28:5;36:6	standards (3) 12:5;34:10,11	supposed (1) 34:2
same (6) 9:1;12:19;25:16; 26:17;34:14;36:4	settlement (33) 7:21;8:12,15; 10:15,16,16;11:19, 20;12:4,6,7,16;13:24; 14:3;15:12,13,24; 17:22,23;18:2,23; 19:1;21:6;22:11,12; 23:18,19;29:1;30:15; 31:2;34:1,8,12	single-spaced (1) 36:19	stands (1) 15:21	Sure (3) 15:1,9;29:22
satisfy (1) 34:9	settlements (6) 10:11;12:24,25; 22:7;29:12;34:10	sit (1) 36:11	started (1) 11:18	surprise (2) 15:17;24:7
saying (6) 11:18;13:6,17; 15:3;16:2;20:9	settles (1) 8:16	sitting (2) 21:15;38:14	state (1) 11:3	T
schedule (4) 7:1;34:24;35:13; 37:1	settling (1) 12:16	six- (1) 36:18	stated (1) 33:20	table (1) 26:15
scheduled (3) 5:15;19:17;30:1	several (2) 8:7;30:2	sleep (1) 37:3	statement (11) 6:14;11:23;15:6; 16:4;22:24;30:21; 35:3,8,25;36:6,12	tack (1) 9:18
scheduling (3) 7:12;22:16;34:24	shadowbox (1) 31:16	slowed (1) 36:18	statements (1) 13:21	talk (1) 25:19
scope (3) 7:12;34:14;38:1	shaky (1) 24:3	smokescreen (1) 36:21	status (2) 6:2,24	telephone (2) 5:17,18
se (1) 23:21	sheet (1) 34:1	sniping (1) 37:20	still (2) 15:19;18:24	telephonic (1) 5:14
seat (1) 12:13	sheets (3) 14:11,14;34:9	solely (1) 37:14	stipulated (1) 20:4	TELEPHONICALLY (1) 4:17
seated (1) 5:2	shift (1) 11:16	solvent (3) 19:12;24:19,20	stop (1) 37:20	telling (3) 23:2;26:3,4
second (6) 5:23;6:5;8:7; 10:14;18:25;28:20	SHORE (46) 4:8;10:25;11:1,1; 12:8;13:2,5;14:20, 23;15:1,3;16:5; 18:18;19:15,22,25; 20:2,12,14,15,16; 21:1,4,7,10,19,22; 22:1,2,3,13,20;23:4, 9,11,12;24:16,25; 33:1,2,7,9,11;35:25; 37:5,16	Somebody (1) 7:18	structure (1) 6:15	ten (4) 8:1,3,17;20:7
secured (16) 7:7,14,17;8:11;9:6, 16;10:4,9;23:16,25; 24:5,8;33:23;35:5; 37:23;38:18	Shore's (2) 26:8;38:17	somehow (1) 31:22	subject (1) 20:8	term (5) 14:11,13,14;34:1,9
securities (1) 8:9	short (2) 5:12;28:16	soon (1) 37:24	submit (3) 35:9,12;36:3	that'll (4) 17:15;32:12,14; 34:18
security (1) 19:25	shortened (1) 37:2	sorry (2) 6:21;19:23	submitted (1) 38:8	theory (1) 30:6
seeing (1) 5:12	shot (1) 25:20	sorts (1) 7:4	submitting (1) 36:5	there'd (1) 28:8
seek (4) 6:25;8:3,7;15:22	show (1) 24:13	sought (2) 7:20;9:4	subordinate (1) 8:7	there're (1) 35:1
seeking (1) 13:12	side (1) 7:18	sound (1) 14:18	subs (1) 30:23	third (2) 5:23;6:8
seems (1) 17:3	sides (1) 28:9	soundly (1) 18:24	subsidiaries (1) 24:18	THOMAS (1) 4:17
sense (1) 12:11	side's (1)	sounds (1) 15:9	substance (1) 38:4	though (2) 20:18;21:22
sensitivity (1) 13:23		South (1) 4:13	substantial (2) 19:10,11	thought (1) 12:8
sent (1) 11:4		southern (1) 7:9	substantively (1) 18:9	three (5) 5:25;6:6,11;25:22; 26:21
separate (1) 30:14		spare (1) 28:12	suggest (2) 14:15;32:4	throughout (1) 6:15
set (9) 7:1;9:7,8;11:3; 13:10;14:14;22:20; 34:23;35:13		speak (2) 7:16;38:6	suggested (1) 7:3	throws (1) 12:10
sets (1)		specific (3) 33:5,22;35:5	suggesting (1) 14:7	tie (1) 29:4
		Specifically (4) 17:6;19:21;23:22; 24:14	suggestion (2) 31:19,22	tied (1) 27:12
		spend (1) 16:3	suggestions (1) 31:17	
		split (1)	supplemental (3) 13:11,14,18	

July 3, 2013

today (5) 6:13;11:11;12:25; 15:7;39:3	Um-hum (1) 13:2	21:12	York (2) 4:6;7:9	596 (1) 8:17
today's (2) 13:4,5	under (4) 10:11;11:6;12:4; 16:16	VITRA (1) 38:8	Z	9
told (2) 10:3;29:2	undersecured (6) 23:25;24:1;25:8; 10:26;19:28:7	W	zero (10) 12:6,17,19;17:7; 19:5;20:17;21:23,24; 25:14,24	90071 (1) 4:15
TOLLES (1) 4:11	understands (1) 24:1	waive (3) 11:25;13:12;21:14	0	9019 (14) 8:15;10:11;12:4; 17:2,20,22;21:5,16; 28:13,18,19;34:9,11, 14
tone (1) 36:16	understood (5) 19:7;23:17;24:15; 29:21;31:20	waiver (1) 15:23	01277 (1) 5:5	9th (1) 38:25
top (1) 21:15	unfair (1) 9:13	waivers (1) 30:24	1	
totally (2) 8:17;9:13	unilateral (1) 14:16	WALPER (5) 4:17;5:18;32:22, 23,24	10:51 (1) 39:8	
trade (1) 38:20	unilaterally (2) 14:8,18	wants (1) 11:14	10036 (1) 4:6	
transactions (1) 9:21	unique (1) 26:16	way (7) 14:22;26:24;27:4; 29:7,21;30:17;31:10	1155 (1) 4:5	
transcript (4) 22:6,16,18;33:21	unless (2) 11:13;17:25	week (2) 7:16,16	12-12020 (1) 5:3	
trial (26) 16:25,25;17:10; 21:9;25:19,24;26:2, 12,12,14;27:4,5;28:3; 30:14,19;33:16,22, 23;34:6;35:4,4,9,16, 22;36:2;39:5	Unsecured (2) 4:3;32:2	weekend (2) 16:4;36:10	13- (1) 5:4	
tried (4) 17:4,15;30:1;34:15	unsuccessful (1) 7:7	what's (2) 23:9;36:3	13-01343 (1) 5:4	
trouble (2) 35:18,20	up (5) 6:7;12:10;13:13; 15:21;32:23	Whereupon (1) 39:8	2	
troubling (1) 36:17	upon (3) 11:25;15:14;30:6	WHITE (2) 4:2;11:1	2.6 (2) 12:18;19:19	
truck (2) 28:24;29:1	usual (1) 37:21	whole (4) 25:10;36:9,23;37:8	200 (3) 20:8,18,20	
true (1) 16:19	Uzzi (1) 8:21	wholeheartedly (1) 30:8	247 (1) 7:25	
trustee (2) 8:8;23:15	V	who's (1) 21:15	26 (1) 33:10	
trustee's (1) 8:13	vacuum (2) 28:5;30:9	who've (2) 14:12;37:18	26th (1) 33:9	
try (5) 28:18;34:12;35:23, 25;36:8	value (14) 8:4;11:21;12:5; 13:13,18;19:12,18; 20:3,6,19;21:24;24:1, 21;29:1	willing (1) 38:22	2nd (1) 33:9	
trying (3) 18:24,25;25:11	valued (1) 25:14	win (1) 25:14	3	
Tuesday (1) 5:15	valuing (1) 17:6	window (1) 10:12	35 (1) 12:19	
twelve (1) 22:25	variety (1) 25:10	wish (1) 29:16	355 (1) 4:13	
two (14) 5:4;8:18;10:7; 13:7;14:10,14;19:16; 20:7;21:7,10;25:15; 31:15;33:16;35:1	various (3) 19:8,22,23	within (2) 17:2;39:6	35th (1) 4:14	
U	vested (1) 9:11	without (3) 15:16;20:24;21:4	4	
ultimately (2) 26:11;30:17	view (5) 10:20;15:8;16:12; 30:17;33:14	word (2) 26:7,8	4th (1) 36:9	
UMB (2) 23:15;24:6	views (6) 12:9;13:1,3;30:16; 36:13;38:9	work (2) 13:17;18:24	5	
	virtually (1)	works (2) 12:13;15:12	5 (3) 5:19;23:22,24	
		worth (1) 20:18		
		writing (1) 6:5		
		Y		